

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

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| NELSON RODRIGUEZ-DUARTE (A024337900/31655-035) | : | DOCKET NO. 13-cv-2606 |
| VS. | : | JUDGE TRIMBLE |
| ERIC HOLDER, JR., ET AL. | : | MAGISTRATE JUDGE KAY |

REPORT AND RECOMMENDATION

Currently before the court is respondent's Rule 12(b)(1) motion to dismiss [doc. 12] the application for a writ of habeas corpus filed by *pro se* petitioner, Nelson Rodriguez-Duarte (hereafter, "petitioner"). This matter has been referred to the undersigned magistrate judge for review, report, and recommendation in accordance with 28 U.S.C. § 636(b)(1)(B).

Petitioner filed an application for a writ of habeas corpus pursuant to 22 U.S. C. § 2241, asserting that his continued detention beyond six months is unconstitutional under the Supreme Court's ruling in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Doc. 1.

In its motion to dismiss, the government establishes that petitioner was removed from the United States to El Salvador on November 11, 2013. Doc. 12, att. 2, pp. 1-2. Since Petitioner is no longer detained by ICE, there is no longer a justiciable controversy before the court. *See Alwan v. Ashcroft*, 388 F.3d 507, 511 (5th Cir. 2004).

Accordingly,

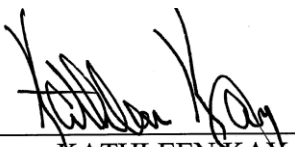
IT IS RECOMMENDED that Respondent's motion to dismiss be GRANTED.

IT IS FURTHER RECOMMENDED that the petition for writ of habeas corpus be DISMISSED WITHOUT PREJUDICE.

Under the provisions of 28 U.S.C. §636(b)(1)(C) and Fed. R. Civ. Proc. 72(b), a party aggrieved by this report and recommendation has 14 days from its service to file specific, written objections with the clerk of court. A party may respond to another party's objections within 14 days after being served with a copy thereof.

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this report and recommendation within 14 days following the date of its service, or within the time frame authorized by Fed. R. Civ. P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error.

THUS DONE this 3rd day of February, 2014.



KATHLEEN KAY
UNITED STATES MAGISTRATE JUDGE